
Publish date:
4/25/2013

WQC number: 848-5514MI12-WQC-1

Public Notice

Closing Date:

5/24/2013

This letter serves as the formal notice of the receipt of an application for a Section 401 Water Quality Certification by the Kentucky Division of Mine Permits (KDMP). The purpose of this notice is to inform the public of active applications awaiting certification under Section 401 of the Clean Water Act (33 U.S.C. § 1341) and to solicit comments and information on any impacts to water quality as it related to the specific project. DMP will evaluate whether the project complies with Kentucky's water quality standards.

The comment period will run for 30 days, as is indicated in the upper portion of this notice. Any person who wishes to comment or receive information pertaining to the pending WQC application, must contact the WQC coordinator at 502 564-2320, or submit comments to: Water Quality Certification 2 Hudson Hollow, Frankfort KY 40601, within the 30 day comment period. All comments will be reviewed and water quality issues will be considered during the review process.

The public may review the detailed Compensatory Mitigation Plan at the Division of Mine Permits office at: #2 Hudson Hollow Frankfort, KY 40601

**Commonwealth of Kentucky
Department for Natural Resources
Division of Mine Permits**

Application for Water Quality Certification for Surface Coal Mining Activities

The Clean Water Act Section 401 Water Quality Certification (WQC) program in Kentucky ensures that activities which may involve a discharge into waters of the Commonwealth which require federal permit or license are consistent with Kentucky's water quality standards in 401 KAR Chapter 5. The Energy and Environment Cabinet has authorized the Department for Natural Resources to issue water quality certifications related to surface coal mining operations. The project may not start until all necessary approvals are obtained. For questions concerning the WQC process, contact the WQC Coordinator at (502)-564-2320.

1. **Applicant Name:** Powell Mountain Energy, LLC
Mailing Address: Rt. 1, Box 140
St. Charles, Virginia 24282
Contact Person: Terah Burdette
Telephone No: (304) 357-5707
E Mail Address: tburdette@archcoal.com

2. **Consultant Name & Address:** Cumberland Valley Engineering, Inc.
P.O. Box 1710, Harlan, Kentucky 40831

Telephone No. (606) 573-6836
E Mail Address: pete.povnter@cveinc.com

3. **Provide a brief description of the proposed activity and stream impact.**
Construction a new drainage channel for maintenance of an existing
stormwater management facility.

4. **Project Location Information:**

County Harlan ; **USGS Quadrangle Name** Louellen/Pennington Gap

Nearest Community & Road Intersection: Clover-Darby, KY 38 & Childs Branch

Longitude 83.0583 **Latitude** 36.8752 (Approximate center of the project area)

5. **List the names of all streams affected by the proposed project:**
Unnamed tributary to Childs Branch

6. For each affected watershed provide the acreage above the toe of the lowest permanent structure.

228.72 ac.

7. For each affected stream provide the linear feet of impact, whether the impact is temporary or permanent and indicate if the stream reach is classified as ephemeral, intermittent, or perennial.

550', intermittent, permanent impact

8. Provide the acreage of wetlands that would be impacted: N/A

9. Beginning at the nearest intersection of two public roads, provide directions to the project site:

Take 421 By-Pass East to KY 38, Take KY 38 to Childs Branch
County Road at Clover-Darby, Take Childs Branch County Road
to Site.

10. Has application been submitted to the U.S. Army Corps of Engineers for this project? Yes X No _____. If yes, indicate type of application:

NW 12 ____ NW 14 ____ NW 21 ____ NW 27 ____ NW 49 ____
NW 50 ____ Individual ____ Other NW 43 (Issued 12/07/12, copy attached)

11. Provide the following permit numbers associated with this mining activity:
SMCRA Permit No. 848-5514, Minor Rev. No. 12, KPDES No. KYG040167

12. The following attachments must be provided:

- a. A watershed map showing all ponds and hollowfills to scale with all intermittent, and perennial stream reaches clearly identified.
- b. A 7.5 minute topographic map delineating the proposed project area.
- c. A copy of the complete Compensatory Mitigation Plan

List all other plans and profiles included with this application:

Refer to Correspondence provided by USCOE dated December 7, 2012.

I hereby request approval for construction across or along a stream as described in this application and supporting attachments. All of the information provided with this application is true and accurate to the best of my belief and knowledge.

Applicant's Signature:

Patricia Leedy, Date: 4/18/13
If signed by applicant's agent, attach power of attorney

SUBMIT APPLICATION AND ATTACHMENTS TO:

WQC COORDINATOR
DIVISION OF MINE PERMITS
#2 HUDSON HOLLOW
FRANKFORT, KENTUCKY 40601



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
3701 Bell Road
NASHVILLE, TENNESSEE 37214

December 7, 2012

Regulatory Branch

SUBJECT: LRN-2012-00321; Powell Mountain Energy LLC, Proposed Maintenance of a Stormwater Management Facility, Unnamed Tributary of Childs Branch, Kentucky Department of Natural Resources #848-5514, Harlan County, Kentucky

Powell Mountain Energy LLC
Route 1, Box 140
St. Charles, Virginia 24282

Dear Gentlemen:

This is in regard to your Department of the Army (DA) permit application to construct a new drainage channel for maintenance of an existing stormwater management facility located at Powell Mountain Energy mining site near the town of Clover-Darby, Harlan County, Kentucky (Latitude 36.8752 and Longitude -83.0583). The proposed work has been assigned File No. LRN-2012-00321 and is identified as Kentucky Department of Natural Resources (KDNR) #848-5514 (previous KDNR #'s 848-5460 and 848-6450). Please refer to these numbers in future correspondence regarding this project.

The U.S. Army Corps of Engineers (USACE) has regulatory responsibilities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Under Section 10, the USACE regulates any work in, or affecting, navigable waters of the U.S. (WOUS). It appears the project area does not include navigable WOUS and would not be subject to the provisions of Section 10. Under Section 404, the USACE regulates the discharge of dredged and/or fill material into WOUS, including wetlands.

Preliminary Jurisdictional Determination:

Based upon a site investigation made on August 20, 2012 and supplemental stream information provided on September 28, 2012, the site contains an intermittent stream that has been diverted around hollow fill (HF) #1. HF #1 is used to store the face-up material from the adjacent underground mine (KDNR #848-5514). The existing HF was constructed in the 1980s and the unnamed tributary became part of the waste treatment system under Section 402 of the Clean Water Act. The proposal would divert the unnamed tributary away from the treatment system into Childs Branch. This office has determined that the water, identified above, may be jurisdictional WOUS in accordance with the Regulatory Guidance Letter for Jurisdictional Determinations issued by the USACE on June 26, 2008 (RGL No. 08-02). As indicated in the guidance, this Preliminary Jurisdictional Determination (PJD) is non-binding and cannot be appealed (33 C.F.R. 331.2) and only provides a written indication that WOUS, including wetlands, may be present on-site. For purposes of computation of impacts, compensatory mitigation requirements and other resource protection measures, a permit decision made on the

basis of a PJD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional WOUS.

Enclosed with this letter are two copies of the PJD and Notification of Administrative Appeal Options form that explains available options regarding this determination. If you agree with the findings of this PJD and understand your options regarding the same, please sign and date both copies, retain one copy for your records and return one copy to this office within 30 days of receipt of this letter. The signed copy should be submitted to the following address:

U.S. Army Corps of Engineers
Nashville District
3701 Bell Road
Nashville, Tennessee 37214
Attn: Forrest McDaniel

Also enclosed with this letter is a map indicating the areas reviewed as part of this PJD. It should be noted that this verification is only for the areas shown on the enclosed map, and does not authorize any work on the site. The review area is solely the wetland boundary as depicted on the attached map.

DA Nationwide Permit #43 :

Based upon the information submitted to this office, to the extent the USACE has jurisdiction over discharge of dredged or fill material associated with the work, we have determined that the placement of fill material for the construction of a new diversion ditch has been previously permitted under authority of DA Nationwide Permit (NWP) #43, Stormwater Management Facilities, which became effective March 19, 2012. The work must be constructed in accordance the attached NWP general and specific conditions as well as the attached special conditions entitled "*SPECIAL CONDITIONS FOR PERMIT LRN-2012-00321, Powell Mountain Energy LLC, KDNR #848-5514*".

The proposed work is listed below:

Intermittent Stream Impacts: Proposed placement of fill material for stream diversion in existing stream channel (< 10 cubic yards).

Diversion Ditch Construction: Proposed 550' channel construction in uplands. The diversion channel would become WOUS after flow is diverted.

It should be noted that if you fail to comply with any of the conditions, this authorization may be modified, suspended, or revoked and an individual permit may be required pursuant to 33 CFR 330.5(d).

The notification that the work is approved under the Nationwide Permit mentioned above is valid until two years from date of letter unless the NWP is modified, suspended, or revoked. If the work has not been completed by that time, you should contact this office to obtain verification that the permit is still valid.

Before you begin construction, you are also responsible for obtaining any other federal, state, and/or local permits, approvals, or authorizations. An individual state 401 certification is required in order for this Nationwide Permit to be valid. You must provide our office with a copy of the required certification or waiver of certification from the state prior to proceeding with the work. You must also comply with all conditions of the state certification. For your convenience, I am forwarding the state a copy of your proposal and plans for their review. The State can be reached at telephone (502) 564-6940.

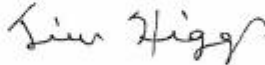
This verification is specific to the construction of a new diversion channel, only. It does not obviate your responsibility to obtain and abide by all other federal, state, and local permits or approvals required for the work nor grant any property rights or exclusive privileges.

If changes in the location or plans of the work are necessary, revised plans should be submitted promptly to this office. No deviation should be made in the approved plans without first obtaining approval from this office.

As soon as the authorized work has been completed and all permit conditions have been met, you must sign the enclosed "Compliance Certification" and return it to the Corps office indicated on the form.

If you have any questions, please contact Forrest E. McDaniel at the above address or telephone 369-7511.

Sincerely,



Tim Higgs
Acting Chief, Eastern Regulatory Section
Regulatory Branch
Nashville District Corps of Engineer

Enclosures

Copy Furnished:

Kevin Hembree
Department for Natural Resources
Division of Mine Reclamation and Enforcement
1804 East Cumberland Ave.
Middlesboro, KY 40965-1229

Danita LaSage
Kentucky Division of Mine Permits
#2 Hudson Hollow Road
Frankfort, KY 40601

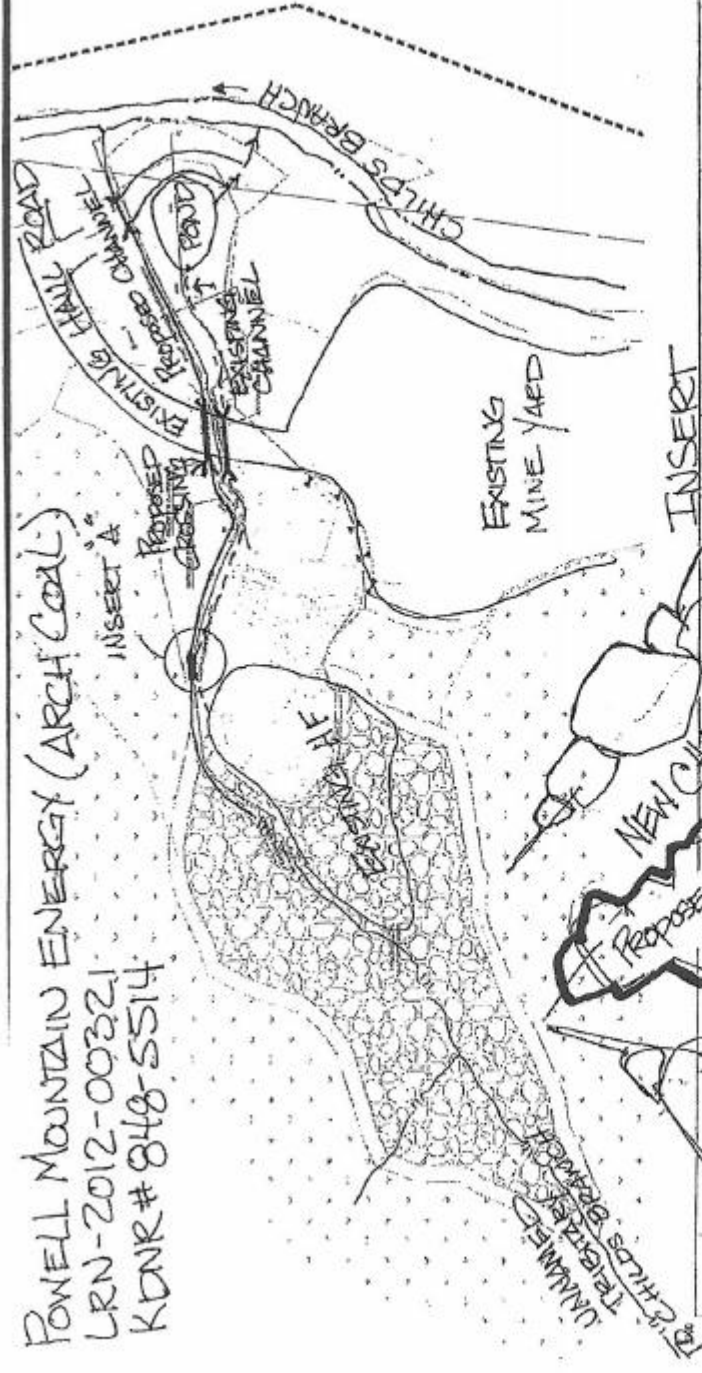
Terah S. Burdette
Arch Coal, Inc.
300 Corporate Centre Drive
Scott Depot, West Virginia 25560

Michael A. Giles
Lone Mountain Processing Inc.
Drawer C
St. Charles, Virginia 24282

***SPECIAL CONDITIONS FOR PERMIT LRN-2012-00321
Powell Mountain Energy LLC, KDNR #848-5514***

- a. Best management practices (BMPs) shall be implemented during construction of the road crossings. BMPs include but are not limited to: utilization of silt fences, straw bales, check dams, limiting vegetation removal and bank shaping to the maximum extent practicable, mulching and seeding, and the prohibition of the use or storage of toxic or hazardous materials within the construction areas. Construction activities shall be performed during low flow conditions. All disturbed areas shall be seeded and mulched to minimize erosion. Appropriate bank protection measures shall be installed in channel or on barren areas requiring erosion control including but not limited to native grasses and forbs, vegetation, and other acceptable clean non-contaminated material.
- b. Natural drainage patterns shall be maintained to the extent practicable by the installation of culverts in sufficient numbers and size under the mining roads to prevent pooling above the crossings or concentrated flow that would result in adverse impacts to bank stabilization below the crossings. All culverts must be installed at channel grade.

POWELL MOUNTAIN ENERGY (ARCH COAL)
 LRN-2012-00321
 KDNR # 848-5514



EXISTING
MINE YARD

INSERT
"A"

PROPOSED
MAINTENANCE
OF STORMWATER
MANAGEMENT
FACILITY

Submitted 10/25/12
on behalf of Powell Mountain
Energy

